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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRIAN BROCKWAY, Individually,
and BRIAN BROCKWAY, Derivatively
on Behalf of ADVANCED MODULAR
CONCEPTS, LLC, and MAXIMUM
ADVANTAGE BUILDING
SOLUTIONS, LLC,

Plaintiffs,

vs.

JEFFREY McCREARY,
AMC BUILDERS, LLC, AMC ROOFING,
LLC, ADVANCED MODULAR
CONCEPTS, LLC d/b/a AMC
CONSTRUCTION SERVICES, and
SHAWN McCREARY,

Defendants.

Civil Action - Law

No.

JURY TRIAL DEMANDED

COMPLAINT

The Plaintiffs, Brian Brockway, Individually, and Brian Brockway, Derivatively on behalf of Advanced Modular Concepts, LLC, and Maximum Advantage Building Solutions, LLC, by and through their attorneys, Kepner, Kepner & Corba, P.C., hereby complain of the Defendants as follows:

1. Plaintiff Brian Brockway ("Brockway"), Individually and Derivatively on Behalf of Advanced Modular Concepts, LLC, is an adult individual who resides at 3863 Smith Street, Bloomsburg, Columbia County, Pennsylvania.
2. Plaintiff Advanced Modular Concepts, LLC ("AMC") is a limited liability company with a business address of 7260 Old Berwick Road, Bloomsburg, Columbia

County, Pennsylvania.

3. Plaintiff Maximum Advantage Building Solutions, LLC (“Maximum Advantage”) is a Pennsylvania limited liability company with a business address of 3863 Smith Street, Bloomsburg, Columbia County, Pennsylvania.

4. Defendant Jeffrey McCreary (“McCreary”) is an adult individual who resides at 595 Zenith Road, Nescopeck, Luzerne County, Pennsylvania.

5. Defendant AMC Builders, LLC (“AMC Builders”) is a limited liability company with a business address of 7260 Old Berwick Road, Bloomsburg, Columbia County, Pennsylvania.

6. Defendant AMC Roofing, LLC (“AMC Roofing”) is a limited liability company with a business address of 7260 Old Berwick Road, Bloomsburg, Columbia County, Pennsylvania.

7. Defendant Advanced Modular Concepts, LLC d/b/a AMC Construction Services is a limited liability company with a business address of 7260 Old Berwick Road, Bloomsburg, Columbia County, Pennsylvania.

8. Defendant Shawn McCreary is an adult individual with an address of 220 River Drive, Bloomsburg, Columbia County, Pennsylvania.

JURISDICTION AND VENUE

9. This Honorable Court has subject matter jurisdiction over this matter pursuant to the provisions of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(b) because this action arises under the Federal Trademark Act of 1946, as amended, and 15 U.S.C. § 1051 *et seq.* (“The Lanham Act”). This Court further has jurisdiction over state law claims pursuant to the doctrine of pendant jurisdiction.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), (c)

because each of the defendants regularly transacts, does and solicits business in this district, and all of the actions set forth herein have taken place in the Middle District of Pennsylvania.

COUNT I - VIOLATION OF 15 U.S.C. § 1051 *et seq.* ("THE LANHAM ACT")
(Plaintiffs vs. Defendants)

12. On or about August 1, 2014 Brockway and McCreary entered into what they believed to be a partnership for a business, which was known as Advanced Modular Concepts, LLC. A copy of the General Partnership Agreement is attached hereto and made a part hereof and marked Exhibit "A."

12. In reality, the agreement which Brockway and McCreary entered into was not a partnership but was, as is indicated by the name, a limited liability company. A copy of the filing for the LLC is attached hereto and made a part hereof and marked Exhibit "B."

13. Brockway, Brockway's wife, Heather Brockway, and McCreary worked at AMC doing construction projects and setting modular homes.

14. However, in the summer of 2017 McCreary began seizing control of AMC. McCreary began to actions to undermine Brockway and AMC.

15. McCreary began telling customers and potential customers that Brockway had no ownership interest in AMC.

16. McCreary began forming new limited liability companies, including AMC Builders and AMC Roofing.

17. These companies were formed without the consent or knowledge of Brockway or Mrs. Brockway. The companies formed by McCreary directly competed with AMC.

18. In the fall of 2017, AMC began refusing to pay subcontractors for work on

its construction jobs. McCreary, and others acting on his behalf, falsely told those subcontractors that Brockway and Sam Bailey, who was hired by McCreary, took all of AMC's assets, and that Brockway was responsible for paying all of the subcontractors who had performed work for AMC.

19. Both McCreary and his brother, Shawn McCreary, have repeatedly told contractors and subcontractors that they have nothing to do with AMC because Brockway took all of the company's assets. These statements are false and defamatory.

20. In reality, 85% of the assets have been held and controlled by McCreary. Despite this fact, McCreary has failed and refused to pay subcontractors and supply persons, including a bill for a crane utilized by McCreary amounting to \$37,000.00. McCreary also attempted to file a false insurance claim whereby he alleged that Brockway stole equipment. A copy of the email McCreary sent to Brockway is attached hereto and made a part hereof as Exhibit "C."

21. Subsequently, McCreary began selling all of the assets of AMC or transferring those assets into AMC Builders. AMC Builders was formed by McCreary to confuse potential customers into believing they were doing business with AMC. Both limited liability companies have similar names and similar logos. The name "Advanced Modular Concepts" was created by Brockway. A copy of the logo of Advanced Modular Concepts, LLC is attached hereto and made a part hereof and marked Exhibit "D". A copy of the logo of AMC Builders, LLC is attached hereto and made a part hereof and marked Exhibit "E".

22. McCreary is now doing AMC jobs with his own company, AMC Builders. McCreary, even though he owns only 50% of the shares of AMC, has treated the company as his own, and has not consulted at all with Brockway concerning any

company decisions. McCreary has undertaken all of these actions without a majority ownership of AMC and without being named as the managing member of the company.

23. McCreary recently advised Brockway that he sold a 2005 Ford F350 and an enclosed trailer and all equipment and inventory to AMC Builders in violation of the Stipulation entered into on October 13, 2017 in the Columbia County Court of Common Pleas. McCreary transferred the aforementioned vehicle and trailer even though the Honorable Thomas A. James ordered that the vehicle and trailer were to remain with Brockway. A copy of the October 13, 2017 Stipulation is attached as Exhibit "F."

WHEREFORE, the Plaintiffs, Brian Brockway and AMC, respectfully request:

- (a) that this Court enter judgment in their favor and against the Defendants, Jeffrey McCreary and Valerie McCreary, in an amount in excess of \$50,000.00;
- (b) That this Court enjoin all Defendants from transferring any assets out of Advanced Modular Concepts, LLC;
- (c) That this Court order the Defendants to transfer all assets that have been removed from Advanced Modular Concepts, LLC back into the company;
- (d) That this Court order the Defendants to cease using any trademark or company logo in the form set forth on Exhibit "E."
- (e) That this Court order that the preliminary injunction remain in effect until a trial on the merits can be held at which time the Plaintiffs request this Court to enter permanent injunctive relief;
- (f) That this Court require that the Defendants to undertake advertising to correct any false and deceptive statements about the Plaintiffs or any products produced by the Plaintiffs;
- (g) That this Court, in light of the wilful, malicious and intentional nature of the

Defendants' conduct, award punitive damages in an amount to be determined at trial;

(h) Such other relief that the Court deems necessary and proper.

COUNT II - BREACH OF FIDUCIARY DUTIES
(Brian Brockway, Individually, and Derivatively on Behalf of AMC vs. Jeff McCreary, AMC Builders and AMC Roofers)

24. Plaintiffs incorporate by reference paragraphs 1 through 23 above as though fully set forth herein at length.

25. As a partner in AMC, McCreary had a fiduciary duty to AMC and his partner Brockway.

26. As employees of AMC, McCreary had a fiduciary duty to AMC and Brockway.

27. The Defendants were required to perform their respective duties in a manner reasonably believed to be in the best interest of AMC and Brockway and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

28. In August 2017, McCreary accused Brockway of stealing equipment, which actually consisted of Brockway's personal tools.

29. Around that same time, McCreary began to carry a pistol on his person in an attempt to intimidate Brockway and Mrs. Brockway.

30. Around the same time, in the latter part of summer 2017, McCreary began to steal money from the company safe. On a number of occasions McCreary can be seen walking into the room where the safe was kept at which time he pushed the security camera up toward the ceiling so he could steal money from the company's safe.

31. McCreary also did business in New York while allowing the workman's compensation insurance for AMC to lapse thereby subjecting the company and

its principals to potential liability.

32. Around the same time, McCreary refused to pay Brockway his salary, even while he was working for AMC. Currently, Brockway is owed 21 weeks of salary at \$1,000.00 per week (or \$21,000.00) together with health insurance for five months at the rate of \$902.09 per month (or \$4,510.45) for a total of \$25,510.45.

33. In a further effort to freeze Brockway and Mrs. Brockway out of AMC, McCreary removed Brockway and Mrs. Brockway's names from all company bank accounts and all company cell phone accounts even though the cell phone accounts were established by using Brockway's personal cell phone account.

34. On or about October 9, 2017 it was agreed by McCreary and Brockway that certain company assets would be divided. This agreement was reduced to a Stipulation referenced as Exhibit "F". The parties agreed to make that division at 4:00 p.m. on Friday, October 13, 2017. On that date, after agreeing to divide assets, McCreary told all AMC employees to leave the premises by 3:30 p.m. so that no one would be at the premises when the assets were divided. Ordinarily, AMC employees work until 5:00 p.m. In addition, McCreary told the employees that he was not going to divide the assets equally.

35. In a further attempt to freeze Brockway out of the business, McCreary, while armed, has attempted to harass and intimidate Brockway and his wife by driving past their house two to three times per week at a slow rate of speed.

36. No operating agreement was ever entered into between Brockway and McCreary for Advanced Modular Concepts, LLC.

37. McCreary has completely frozen Brockway out of AMC and is now using

the company as his own without consulting with Brockway, even though he is only a 50% owner of the company.

38. By reason of McCreary's illegal and oppressive conduct, as detailed herein, he has breached his respective fiduciary duties owed to the AMC and Brockway.

39. McCreary's breaches of his respective fiduciary duties were wanton and willful and warrant the imposition of punitive damages.

WHEREFORE, Plaintiffs Brian Brockway and Advanced Modular Concepts, LLC respectfully request that this Honorable Court enter a judgment in their favor and against Defendant Jeffrey McCreary in an amount in excess of \$50,000.00, together with punitive damages, and any other relief that this Honorable Court deems appropriate and just.

COUNT III - TORTIOUS INTERFERENCE
(Brian Brockway vs. Defendants)

40. Plaintiff incorporates by reference paragraphs 1 through 39 above as though fully set forth herein at length.

41. By reason of the Defendants' conduct as described herein, it is believed and therefore averred that the Defendants have denied the Plaintiffs the opportunity of securing work for the benefit of AMC and Brockway.

42. Specifically, it is believed that by virtue of Defendants' respective unilateral control, discretion and use of particular AMC assets, they have diverted customers, existing jobs, projects, future work, customers and general business opportunities away from AMC and Brockway that would have benefitted them.

43. Therefore, the Plaintiffs have lost the opportunity for contracts, potential business and the ability to gain investments and future work. McCreary told individuals

at Statewide Modular to never use Brockway or any company with which he is associated.

44. The Plaintiffs believe that any diminished value of their business interests is a direct result of Defendants' deceptive conduct in siphoning AMC's work and assets to and for their own benefit.

45. The action of the Defendant was knowingly and purposely done with the intent to interfere with the Brockway's right as a partner of AMC to contract with clients and prospective customers and the profits ordinarily derived therefrom.

46. As a result of Defendants' tortious interference with contracts and with the Plaintiffs' perspective economic advantage, the Plaintiffs have been damaged.

WHEREFORE, Plaintiffs Brian Brockway and Advanced Modular Concepts, LLC respectfully request that this Honorable Court enter judgment in their favor and against Defendants in an amount in excess of \$50,000.00, together with punitive damages and any other relief that this Honorable Court deems appropriate and just.

COUNT IV - CONSPIRACY
(Plaintiffs vs. Defendants)

47. Plaintiff incorporates by reference paragraphs 1 through 46 above as though fully set forth herein at length.

48. By virtue of the conduct described herein, Defendants' conspired or agreed with intent to do an unlawful act or to do any otherwise lawful act by unlawful means.

49. The Defendants' conduct described herein represents a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means for an unlawful purpose.

50. The Defendants' conduct has been with malice.

WHEREFORE, Plaintiffs Brian Brockway and Advanced Modular Concepts, LLC, respectfully request that this Honorable Court enter a judgment in their favor and against the Defendants in an amount in excess of \$50,000.00, together with punitive damages, and any other relief that this Honorable Court deems appropriate and just.

COUNT V - FREEZE-OUT
(Brian Brockway, Individually vs. Jeffrey McCreary)

51. Plaintiffs incorporates by reference paragraphs 1 through 50 above as though fully set forth herein at length.

52. Brockway signed a General Partnership Agreement with McCreary, which McCreary provided to him on or about August 1, 2014. See Exhibit "A." Both McCreary and his wife, Valerie McCreary, contributed capital to the company.

53. McCreary began freezing Brockway out of any operations of AMC. McCreary took Brockway and Heather Brockway, his wife, off of company bank accounts and other credit accounts and froze Brockway out of the company's software. After freezing Brockway out of the business, McCreary began to carry a gun in and out of the office.

54. McCreary also encouraged Brockway to start a new business to try to get him out of AMC.

55. The Defendant AMC currently is delinquent in paying payroll taxes. When Brockway was frozen out of the business, \$58,000.00 in payroll taxes was delinquent.

56. The Defendant AMC has not paid Brockway his weekly salary or his health insurance since September 2017.

57. Since McCreary has taken all of these oppressive actions referenced above against Brockway, the company has been hemorrhaging financially.

58. Currently, the Company has assets of approximately \$150,000.00 and

liabilities of approximately \$180,00.00.

59. There is little hope for the company to be viable, especially since McCreary and his wife are now involved in AMC Roofing, AMC Builders, and Advanced Modular Concepts, LLC d/b/a AMC Construction Services.

WHEREFORE, Plaintiffs Brian Brockway, Heather Brockway and Advanced Modular Concepts, LLC, respectfully request that this Honorable Court enter a judgment in their favor and against Defendant Jeffrey McCreary, Valerie McCreary in an amount in excess of \$50,000.00, together with punitive damages, and any other relief this Honorable Court deems appropriate and just.

COUNT VI - CONVERSION
(Plaintiffs vs. Defendants)

60. Plaintiffs incorporates by reference paragraphs 1 through 59 above as though fully set forth herein at length.

61. The Defendants improperly converted assets owned by AMC, because they acted without the majority control of the company and without the consent of a managing member of the company to dispose of and transfer assets of the company.

62. All of the actions undertaken by the Defendants were done without a proper company purpose and solely to achieve the financial gain of the Defendants.

63. The Defendants have transferred assets to the other listed limited liability companies and have also sold AMC's assets to third parties.

64. McCreary and his brother, Shawn McCreary, met with AMC employees and conspired to force Brockway from the company.

WHEREFORE, Plaintiffs Brian Brockway, Heather Brockway and Advanced Modular Concepts, LLC, respectfully request that this Honorable Court enter a judgment in their favor and against Defendant Jeffrey McCreary, Valerie McCreary in an amount

in excess of \$50,000.00, together with punitive damages, and any other relief this Honorable Court deems appropriate and just.

COUNT VII - DEFAMATION
(Plaintiffs vs. Defendants)

65. Plaintiffs incorporates by reference paragraphs 1 through 64 above as though fully set forth herein at length.

66. McCreary has falsely stated to a number of the customers of the Plaintiffs that Brian Brockway has stolen AMC assets, even though he knew that was not true and even though he agreed by Stipulation dated October 13, 2017, before the Honorable Thomas A. James, P.J. of the Court of Common Pleas of Columbia County, Pennsylvania, that Brockway was to receive all of the vehicles and equipment which McCreary said he stole.

67. In addition, McCreary has stated to customers of Brockway that he had obtained a \$250,000.00 judgment against Brockway. McCreary has also stated to a number of AMC and Maximum Advantage customers that Brockway was not legitimate and was a "con man." He referred to Brockway as a "thief," and stated that the police were looking for Brockway because he had stolen AMC property. McCreary also told Maximum Advantage employees that Brockway stole equipment, and, that if they were found using the equipment that was actually awarded to Brockway, they would be arrested as accomplices.

WHEREFORE, Plaintiffs Brian Brockway, Advanced Modular Concepts, LLC, and Maximum Advantage Building Solutions, LLC respectfully request that this Honorable Court enter a judgment in their favor and against the Defendants in an amount in excess of \$50,000.00, together with punitive damages, and any other relief this Honorable Court deems appropriate and just.

COUNT VIII - COMMERCIAL DISPARAGEMENT
(Brian Brockway, Individually, and Maximum Advantage Building Solutions vs. Defendants)

68. Plaintiffs incorporates by reference paragraphs 1 through 67 above as though fully set forth herein at length.

69. McCreary has stated to customers of Brockway that they should not do business with Brockway because Brockway is dishonest and because he will not be able to complete their work.

70. McCreary told his customers and others in the field that Brockway took all of the equipment so McCreary would not be able to work.

71. McCreary told Eric Betz and Harold Macking that the police and Sheriff's Department were looking for a truck and equipment, which Brockway was given in the October 13, 2017 Stipulation in Columbia County. He also told them Brockway was a thief.

WHEREFORE, Plaintiffs Brian Brockway and Advanced Modular Concepts, LLC, respectfully request that this Honorable Court enter a judgment in their favor and against the Defendants in an amount in excess of \$50,000.00, together with punitive damages, and any other relief that this Honorable Court deems appropriate and just.

Respectfully submitted,

KEPNER, KEPNER & CORBA, P.C.

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